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4 IN THE UNITED STATES DISTRICT COURT
5 FOR THE WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 HAROLD L. HUTCHINSON, JR.,

8 Plaintiff,

9 vs.

10 GARRISON PROPERTY AND CASUALTY
11 INSURANCE COMPANY,

12 Defendant.

Case No. C18-0656 RSM

ORDER OF REMAND

13 **I. INTRODUCTION**

14 This matter comes before the Court on Plaintiff's Motion to Remand this case to
15 Snohomish County Superior Court. Dkt. #10. Plaintiff asserts that Defendant's removal was
16 untimely, and seeks an award of fees related to this motion. *Id.* Defendant opposes the motion,
17 arguing that the removal was timely, and that there was a reasonable basis for removal even if it is
18 ultimately remanded. Dkt. #12. For the reasons discussed below, the Court agrees that remand is
19 warranted in this action and GRANTS Plaintiff's motion.
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21 **II. BACKGROUND**

22 This matter involves an insurance coverage dispute. Dkt. #1. Plaintiff initially served a
23 Summons and Complaint, along with discovery requests, on the Washington State Insurance
24 Commissioner on February 28, 2018. Dkt. #11, Ex. 1. The Office of the Insurance Commissioner
25 subsequently forwarded the Summons and Complaint to Defendant, which was received on March
26 5, 2018. Dkt. #13 at ¶ 3 and Ex. A. thereto.
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1 Defendant then attempted to file a Notice of Removal with the Snohomish County Superior
2 Court on or about March 22, 2018. Dkt. #13 at ¶ 4. However, the filing was rejected by the
3 Snohomish County Superior Court on the grounds that the case had not been filed. *Id.* As a result,
4 defense counsel contacted Plaintiff's counsel, asking that he forward the case number once the
5 Complaint was filed. Dkt. #13, Ex. B. Plaintiff's counsel confirmed that he would do so. *Id.*, Ex.
6 C.

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8 On April 30, 2018, Plaintiff filed the Summons and Complaint, along with an Amended
9 Complaint, in the Snohomish County Superior Court. Dkt. #13 at ¶ 8 and Ex. E thereto. Defense
10 counsel received notice of the filing on May 2, 2018. *Id.* at ¶ 9 and Ex. F thereto.

11 On May 4, 2018, Defendant filed Notices of Removal in both federal and state court. *Id.*
12 at ¶ 10 and Ex. F thereto. The instant motion followed.

13 III. DISCUSSION

14 A. Legal Standard

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16 When a case is filed in state court, removal is proper if the Complaint raises a federal
17 question or where there is diversity of citizenship between the parties and the amount in
18 controversy exceeds \$75,000. 28 U.S.C. §§ 1331, 1332(a). It is presumed, however, “that a
19 cause lies outside [the] limited jurisdiction [of the federal courts] and the burden of establishing
20 the contrary rests upon the party asserting jurisdiction.” *Hunter v. Philip Morris USA*, 582 F.3d
21 1039, 1042 (9th Cir. 2009) (quoting *Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 684 (9th
22 Cir. 2006) (*per curiam*) (citing *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377
23 (1994)) (alterations in original). This Court must order remand if there is any defect which causes
24 federal jurisdiction to fail. 28 U.S.C. § 1447(c). The removal statutes are construed restrictively,
25 and any doubts about removability are resolved in favor of remanding the case to state court.
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1 *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). On a motion to remand, the removing
2 defendant faces a strong presumption against removal, and bears the burden of establishing that
3 removal was proper by a preponderance of evidence. *Id.* at 567; *Sanchez v. Monumental Life*
4 *Ins. Co.*, 102 F.3d 398, 403-04 (9th Cir. 1996). However, this Court lacks discretion to remand
5 a case to the state court if the case was properly removed. *Carpenters S. Cal. Admin. Corp. v.*
6 *Majestic Hous.*, 743 F.2d 1341, 1343 (9th Cir. 1984), *abrogated in part on other grounds*,
7 *Southern Cal. IBEW-NECA Trust Funds v. Standard Indus. Elec. Co.*, 247 F.3d 920, 924 n.6 (9th
8 Cir. 2001).

10 **B. Time for Removal**

11 In the instant matter, Plaintiff concedes that diversity jurisdiction would lie in this Court,
12 but argues that Defendant's removal was untimely. Dkt. #10 at 2-3. Under 28 USC § 1446(b),
13 "[t]he notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt
14 by the defendant, through service or otherwise, of a copy of the initial pleading setting for the claim
15 for relief upon which such action or proceeding is based, . . .". Plaintiff asserts that because the
16 Notice of Removal was filed more than 30 days after he served his Summons and Complaint on the
17 Washington Insurance Commissioner, this matter must be remanded to state court. Dkt. #10.

19 Defendant, relying on Washington Rule of Civil Procedure 3(a), argues that the initial service
20 is void because Plaintiff did not file his action within 14 days of Defendant's demand that he file the
21 Summons and Complaint in the Superior Court. *See* CR 3(a) ("Upon written demand by any other
22 party, the plaintiff instituting the action shall pay the filing fee and file the summons and complaint
23 within 14 days after service of the demand or the service shall be void."). As a result, Defendant
24 asserts that the service date of the Amended Complaint controls, which was April 30, 2018, and
25 therefore it timely filed Notices of Removal within 30 days of that date. Dkt. #12. The Court
26 disagrees with Defendant.
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1 First, the Court agrees with Plaintiff that Defendant did not make a written demand to file as
2 required by the Washington State Civil Rules. *See* Dkt. #14 at 1-3. As proof of its demand, Defendant
3 attaches an email to Plaintiff's counsel dated March 23, 2018. Dkt. #13, Ex. B. That entirety of
4 that email states:

5 Gary,

6 Per our conversation, our office represents Garrison Property and Casualty
7 Insurance Company in the *Hutchinson* matter. My contact information is
8 located below in the signature block. Moving forward, if you could also
9 include Robert McLay and Joshua Kastan on any other correspondence (cc-
ed here), I would greatly appreciate it.

10 It is my understanding that this Complaint has not yet been filed, but that your
11 office intends to do so. If you could forward us the case number as soon as
the Complaint is filed, we will proceed with filing our responsive pleading.

12 If you have any other questions, please feel free to let us know.

13 *Id.* Nothing in that email indicates a demand that the Summons and Complaint be filed or that
14 the filing fee be paid. It does not reference the relevant Civil Rule. At most, the email requests
15 that the case number be forwarded as soon as the case is filed. Further, one week later, defense
16 counsel followed up regarding discovery. Dkt. #13, Ex. D. He again noted his understanding
17 that the Complaint had not yet been filed. *Id.* Nothing in that email contained a demand to file.
18 Instead, defense counsel simply stated that his client would not respond to discovery until 30
19 days after the Complaint was filed. *Id.* Therefore, Civil Rule 3(a) was never triggered.

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21 Likewise, the Court agrees with Plaintiff that Defendant did not serve a demand as
22 required by the Washington State Civil Rules. As Plaintiff notes, absent an agreement to allow
23 service via email between the parties, email is insufficient to accomplish service. Indeed,
24 Washington Civil Rule 5(b)(1) provides:
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26 Whenever under these rules service is required or permitted to be made upon
27 a party represented by an attorney the service shall be made upon the attorney
28 unless service directly upon the party is ordered by the court. Service upon

1 the attorney or upon a party shall be made by delivering a copy to the party
2 or the party's attorney or by mailing it to the party's or the attorney's at his
3 last known address or, if no address is known, filing with the clerk of the
4 court an affidavit of attempt to serve. Delivery of a copy within this rule
5 means: handing it to the attorney or to the party; or leaving it at the party's or
6 the attorney's office with a clerk or other person in charge thereof; or, if there
is no one in charge, leaving it in a conspicuous place therein; or, if the office
is closed or the person to be served has no office, leaving it at the person's
dwelling house or usual place of abode with some person of suitable age and
discretion then residing therein.

7 CR 5(b)(1). Defendant's email was not served in accordance with this Rule. Therefore, CR 3(a)
8 was never triggered.

9 For these reasons, the Court finds the date of service that triggered the time for removal
10 was February 28, 2018 – the date Plaintiff served a Summons and Complaint on the Washington
11 State Insurance Commissioner. Defendant did not remove the matter until May 4, 2018, which
12 was 65 days after service on Defendant. *See* Dkt. #1. Therefore, the removal was untimely and
13 this matter must be remanded to the Superior Court.

14 **C. Request for Attorney Fees and Costs**

15 Plaintiff has requested his attorney's fees in connection with his motion to remand. Dkt.
16 #10 at 3-4. In an Order remanding a case, this Court "may require payment of just costs and any
17 actual expenses, including attorney fees, incurred as a result of the removal." 28 U.S.C. §
18 1447(c). "Absent unusual circumstances, courts may award attorney's fees under § 1447(c) only
19 where the removing party lacked an objectively reasonable basis for seeking removal." *Martin*
20 *v. Franklin Capital Corp.*, 546 U.S. 132, 126 S. Ct. 704, 711, 163 L. Ed. 2d 547, 555 (2005). In
21 exercising its discretion to award fees under section 1447(c), this Court must consider "the desire
22 to deter removals sought for the purpose of prolonging litigation and imposing costs on the
23 opposing party, while not undermining Congress' basic decision to afford defendants a right to
24 remove as a general matter, when the statutory criteria are satisfied." *See id.*

1 In view of the considerations highlighted in *Martin*, the Court finds an award of costs
2 against Defendant for Plaintiff's expenses in remanding this action to be a necessary or just result
3 under section 1447(c). Defendant cannot genuinely believe that its attorney's informal email to
4 Plaintiff's counsel, confirming that the Complaint had not been filed and requesting that the case
5 number be forwarded when it was filed, constituted a demand under Civil Rule 3(a). Nor can it
6 genuinely believe that the "demand" was properly served. Moreover, none of defense counsel's
7 email correspondence indicated an intent to remove. Instead, defense counsel stated it would file
8 its "responsive pleading" and "respond to the discovery that was attached to the Complaint" after
9 the Complaint was filed. Dkt. #13, Exs. B and D. Thus, the Court finds no objectively reasonable
10 basis for seeking removal. Accordingly, Defendant shall pay to Plaintiff the costs associated
11 with remanding the case back to state court.
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13 IV. CONCLUSION

14 Having reviewed Plaintiff's motion, Defendant's opposition thereto, the Reply in support
15 thereof, along with the Declarations and Exhibits and the remainder of the record, the Court
16 hereby finds and ORDERS:
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- 18 1. Plaintiff's Motion to Remand (Dkt. #10) is GRANTED and this case is remanded
19 to Snohomish County Superior Court.
- 20 2. Plaintiff's request for costs is GRANTED. No later than fourteen (14) days from
21 the date of this Order, Plaintiff shall file a supplemental motion for fees and costs
22 in this Court, appending the evidence necessary to support its request. Plaintiff
23 shall note the motion for two Fridays after the date it is filed. Defendant shall
24 respond no later than the Monday prior to the noting date, and shall limit its
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1 response only to the issue of the reasonableness of the fees and costs sought by
2 Plaintiff. No Reply brief shall be filed

3 3. This matter is now CLOSED.

4 DATED this 14th of June 2018.

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7 RICARDO S. MARTINEZ
8 CHIEF UNITED STATES DISTRICT JUDGE
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